D

October TERM 1970

No. 6935

Petition for a Writ of Certiorari

Not Printed

TABLE OF CONTENTS

	Page
Statement of the case	2
Reasons for denying the writ	3
Conclusion	4
Certificate of service	5
Appendix "A"	A-1

Cases Cited

Link v. Wabash R. Co., 1962, 370 U.S. 626	3
Provenza v. H. and W. Wrecking Co., 5 Cir., 1970, 424 F. 2d 629	3

Rule Cited

Rule 23, Federal Rules of Civil Procedure	2

IN THE

SUPREME COURT OF THE UNITED STATES

No. 6935

OCTOBER TERM, 1970

JOHN A. HYLER, et al.,
Petitioners,

vs.

REYNOLDS METALS COMPANY, et al.,
Respondents.

BRIEF OF RESPONDENT, REYNOLDS METALS COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent Reynolds Metals Company opposes the Petition for Writ of Certiorari filed in this cause and says that this cause should not be reviewed by this Honorable Court for the reasons hereinafter set out in this brief.

STATEMENT OF THE CASE

Respondent Reynolds Metals Company finds petitioners' statement of the case omissive. Petitioners, the plaintiffs in the district court, failed to state that in the district court this respondent, a defendant in the district court, and the other defendants had, by way of motions to dismiss, challenged petitioners' right to maintain a class action in a Title VII suit, or, if defendants were mistaken in that relief, defendants had in the alternative moved the Court to enter an order requiring the petitioners to identify with proper and sufficient certainty the alleged class or classes of employees of this respondent sought to be represented by the plaintiffs in order to permit the defendants to prepare and file their defensive pleadings thereto and prepare their defenses, or upon the plaintiffs' failure so to do, to dismiss the action. The district court on May 19, 1969, entered an order overruling the motions to dismiss the complaint, but, further, the district court concluded that the case was controlled by the recent revision of Rule 23 of Federal Rules of Federal Procedure, that under that Rule the class or classes sought to be represented should be defined adequately at the beginning of the lawsuit, and that the complaint in the case did not sufficiently or properly define the class or classes sought to be represented, and the court entered an order that the action may be maintained "as a class action upon condition, however, that the plaintiffs shall file within thirty days from the date hereof an amendment to their complaint defining clearly and with particularity the class which they seek to represent in this action, and upon the further condition that the plaintiffs file with the clerk of this court, in writing, the names and addresses of all members of such class, to the best of their knowledge, information and belief." A copy of that court order is set out in Appendix "A" to this brief.

No effort was made to comply with the court order of May 19, 1969, and the order of the district court entered on February 17, 1970, set out in Appendix A to petitioners' petition for a writ of certiorari (erroneously reproduced in that appendix as being "Done, this the 19th day of May, 1969," whereas the order should read "DONE this 17th day of February, 1970") clearly predicates the dismissal not solely on the failure of plaintiffs' attorneys of record to appear for the pretrial conference at the appointed hour but on that failure coupled with petitioners' failure to have complied with the provisions of the order entered on May 19, 1969. No justification or excuse for that latter failure appears or is suggested in the petitioners' petition for certiorari or in the record below.

REASONS FOR DENYING THE WRIT

The decisions of the United States Court of Appeals for the Fifth Circuit affirming the district court's decision is reproduced in Appendix B to petitioners' Petition for Writ of Certiorari and that decision correctly finds from the record that the dismissal order in the district court was based not only on petitioners' failure to appear at the pretrial conference but also on their refusal or failure to amend the complaint in compliance with the district court's order of May 19, 1969, and the Circuit Court properly concluded that under those circumstances there was no abuse of discretion on the part of the district court in entering the dismissal but rather such action was in accord with well settled principles, citing **Link v. Wabash R. Co.**, 1962, 370 U.S. 626, and **Provenza v. H. and W. Wrecking Co.**, 5 Cir., 1970, 424 F. 2d 629. Petitioners' petition for certiorari has not indicated or even suggested that the decision of the U. S. Court of Appeals for the Fifth Circuit in this cause was in conflict with a decision of another court of appeals on the same matter or had decided an important question of

federal law which had not been but should be settled by this Honorable Court, or had decided a federal question in a way in conflict with applicable decisions of this Honorable Court or had so departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of this Honorable Court's power of supervision. The decision of the district court and the decision of the United States Court of Appeals for the Fifth Circuit in this cause were both in harmony with and in conformity to the applicable decisions of this Honorable Court. There is a complete absence in this cause of any special and important reason for this Honorable Court to exercise its sound judicial discretion to grant the writ of certiorari prayed for by the petitioners.

CONCLUSION

Respondent Reynolds Metals Company submits that for the foregoing reasons this Honorable Court should deny the petition for writ of certiorari prayed for in this cause.

Respectfully submitted

.....

J. R. FORMAN, JR.

.....

SAMUEL H. BURR
Sixteenth Floor
Bank for Savings Building
Birmingham, Alabama 35203
Attorneys for Respondent,
Reynolds Metals Company

THOMAS, TALIAFERRO, FORMAN,
BURR & MURRAY
Of Counsel

Certificate of Service

This is to certify that I have served a copy of the foregoing Brief of Respondent Reynolds Metals Company in Opposition to Petition for Writ of Certiorari by mailing a copy thereof, postage prepaid, on this the 21st day of May, 1971, to the following attorneys of record:

Orzell Billingsley, Jr., Esq.
1630 Fourth Avenue, North
Birmingham, Alabama 35203
Nathaniel R. Jones, Esq.
1790 Broadway
New York, N. Y. 10019
Attorneys for Petitioners

Charles D. Rosser, Esq.
Post Office Box 496
Tuscumbia, Alabama 35674
Attorney for Respondents Local No. 200 Aluminum Workers International Union and Local No. 1293 Brotherhood of Painters, Decorators and Paper Hangers of America

Clarence F. Rhea, Esq.
Hawkins, Rhea & Keener
930 Forrest Avenue
Gadsden, Alabama 35902
Attorneys for Respondent Local 320 Operating Engineers

Jerome A. Cooper, Esq.
Cooper, Mitch & Crawford
1025 Bank for Savings Building
Birmingham, Alabama 35203
Attorneys for Respondents Local No. 445, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Local No. 760, United Association of Journeymen, Plumb-

ers & Steamfitters; Local No. 109, United Brotherhood of Carpenters & Joiners of America; Local No. 8, Brickmasons & Plasterers of America; Local No. 1189, International Association of Electrical Workers

.....

J. R. Forman, Jr.
Of Counsel

APPENDIX

APPENDIX "A"

(Number and Title Omitted) (Filed: May 15, 1969)

This cause, coming on to be heard, was submitted to the court on the following motions: (1) motion to strike and dismiss and motion to dismiss the complaint as last amended, refiled in behalf of defendant Local 320 Operating Engineers and motion to require the plaintiffs to define and identify the class or classes represented as plaintiffs, and motion to dismiss this cause filed in behalf of said defendant; (2) motion to dismiss the complaint, refiled in behalf of Reynolds Metals Company, and motion to dismiss the complaint as last amended and, in the alternative, to require plaintiffs to define with certainty the alleged class or classes represented herein; (3) motion filed in behalf of defendants Brotherhood of Painters, Decorators and Paperhangers of America, Local No. 1293, and Aluminum Workers International Union, Local No. 200, to require plaintiffs to identify with proper certainty the alleged class represented herein or, in the alternative, to dismiss this action; and (4) motion filed in behalf of defendants, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local No. 433; United Association of Journeymen, Plumbers & Steamfitters, Local No. 760; International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 477; United Brotherhood of Carpenters & Joiners of America, Local No. 1031; Bricklayers & Plasterers of America, Local No. 8; International Brotherhood of Electrical Workers, Local No. 558, and International Association of Machinists, Local No. 1189, to require plaintiffs to identify and define the alleged class represented herein, or, in the alternative, to dismiss the action.

Upon consideration of the above motions and oral argument of counsel thereon, it is the opinion of the court that each of the above-described motions to strike and dismiss

ers & Steamfitters; Local No. 100, United Brotherhood of Carpenters & Joiners of America; Local No. 8, Bricklayers & Plasterers of America; Local No. 1180, International Association of Electrical Workers.

J. R. Forman, Jr.
Of Counsel

APPENDIX

APPENDIX "A"

(Number and Title Omitted) (Filed: May 19, 1969)

This cause, coming on to be heard, was submitted to the court on the following motions: (1) motion to strike and dismiss and motion to dismiss the complaint as last amended, refiled in behalf of defendant Local 320 Operating Engineers and motion to require the plaintiffs to define and identify the class or classes represented as plaintiffs, and motion to dismiss this cause filed in behalf of said defendant; (2) motion to dismiss the complaint, refiled in behalf of Reynolds Metals Company, and motion to dismiss the complaint as last amended and, in the alternative, to require plaintiffs to define with certainty the alleged class or classes represented herein; (3) motion filed in behalf of defendants Brotherhood of Painters, Decorators and Paperhangers of America, Local No. 1293, and Aluminum Workers International Union, Local No. 200, to require plaintiffs to identify with proper certainty the alleged class represented herein or, in the alternative, to dismiss this action; and (4) motion filed in behalf of defendants, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local No. 455; United Association of Journeymen, Plumbers & Steamfitters, Local No. 760; International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 477; United Brotherhood of Carpenters & Joiners of America, Local No. 109; Brickmasons & Plasterers of America, Local No. 8; International Brotherhood of Electrical Workers, Local No. 558, and International Association of Machinists, Local No. 1189, to require plaintiffs to identify and define the alleged class represented herein, or, in the alternative, to dismiss the action.

Upon consideration of the above motions and oral argument of counsel thereon, it is the opinion of the court that each of the above-described motions to srike and dismiss

the complaint, and the complaint as last amended, is due to be overruled.

It is the further opinion of the court that this case is controlled by the recent revision to Rule 23, which requires that the class sought to be represented be defined adequately at the beginning of the lawsuit, and that the complaint in this case does not sufficiently or properly define the class which the plaintiffs seek to represent.

It is, accordingly, ORDERED, ADJUDGED and DECREED by the court that the above-described motions to strike and dismiss the complaint and the complaint as last amended be and the same hereby are, separately and severally, overruled.

It is further ORDERED, ADJUDGED and DECREED by the court that this action is to be maintained as a class action upon condition, however, that the plaintiffs shall file within thirty days from the date hereof an amendment to their complaint defining clearly and with particularity the class which they seek to represent in this action; and upon the further condition that plaintiffs file with the Clerk of this court, in writing, the names and addresses of all members of such class, to the best of their knowledge, information and belief.

This order shall be without prejudice to the rights of defendants to seek relief by appropriate motion should said amendment be not filed or fail to designate with particularity a proper class, and without prejudice to whatever rights plaintiffs may have to amend or change the designation of the class which they seek to represent, during the pendency of this action, for proper cause shown.

Each defendant is hereby allowed thirty days from and after the filing of said amendment to the complaint within which to answer.

Done, this the 19th day of May, 1969.

/s/ Seybourn H. Lynne
Chief Judge